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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,844	01/28/2005	Colin John Macleod	12123-0004	9345
22902	7590	10/04/2006	EXAMINER	
CLARK & BRODY 1090 VERNON AVENUE, NW SUITE 250 WASHINGTON, DC 20005				SHAW, ELIZABETH ANNE
ART UNIT		PAPER NUMBER		
				3644

DATE MAILED: 10/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/522,844	MACLEOD, COLIN JOHN
	Examiner Elizabeth A. Shaw	Art Unit 3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 January 2005.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-4,7,8 and 10-12 is/are rejected.
- 7) Claim(s) 5,6 and 9 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/28/05</u> .	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caillouet (5,450,818) in view of Margen (4,258,661). Caillouet shows a fish farming system having a holding tank 20 a means to intake water 28 to the holding tank 20, a means for discharging water 27 to generate a flow of water where the discharging means 27 comprises a means for collection of waste material 85 from the bottom of the tank 20 and removing 52 the material from the water and using a pump means 93 to move the waste and the water. The tank 20 having at least one sloping wall 76 defining a generally V-shaped cross-section. Caillouet does not disclose the system being onshore or using seawater. Margen teaches a fish farming system with a holding tank 1 located onshore and using seawater 11. With respect to claim 1, to use the onshore location of Margen with the system of Caillouet would have been obvious to one skilled in the art in order to set up a system that does not require room in a body of water and allows for easier monitoring by the farmer. Further the use of seawater would have been obvious to one skilled in the art as a replacement of functional equivalents replacing one type of water for another depending on the types of fish being grown.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caillouet in view of Margen as applied to claim 1 above and further in view of Jungling et al (6,161,504). The combination of Caillouet and Margen does not disclose the tank being on a parallel axis to the shoreline. Jungling et al show a fish tank 11 installed parallel to the shoreline 16 where the intake 12 is spaced from the discharge line 14 such that one is relatively downstream from the other. With respect to claim 8, to place the installation of Caillouet and Margen parallel as taught by Jungling et al would have been obvious to one skilled in the art in order to provide a naturally flowing current in the direction of the water and to create a larger habitat to hold the fish.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caillouet in view of Margen as applied to claim 1 above and further in view of Molaug et al (4,359,014). The combination f Caillouet and Margen does not teach the use of a sensor. Molaug et al teaches a sensor 16, 17 for sensing the amount of oxygen in the water, col. 2, lines 27-33. With respect to claim 10, to use the sensor of Molaug et al with the system of Caillouet and Margen would have been obvious to one skilled in the art in order to monitor the water quality to ensure the correct habitat for the fish in the system.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caillouet in view of Margen as applied to claim 1 above and further in view of Wittstock et al (5,584,991). The combination of Caillouet and Margen does not disclose an external biological filter. Wittstock et al teaches a fish system having a holding tank 12 and an exterior biological filter 30 connected by a water recirculation means 44, 102. With

respect to claim 11, to use the external filter of Wittstock et al with the system of Caillouet and Margen would have been obvious to one skilled in the art in order for the current to remove waste material from the tank with the water to be cleaned.

***Allowable Subject Matter***

Claims 5, 6, 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Included for further reference are: Groves (3,495,572) and Berger et al (4,171,681).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 571-272-6908. The examiner can normally be reached on M-Th 10:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Elizabeth Shaw*  
Elizabeth A. Shaw  
Examiner  
Art Unit 3644

September 22, 2006

*Teri Pham Luu*  
TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER